

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 9212 of 2006
With
SPECIAL CIVIL APPLICATION No. 9213 of 2006
To
SPECIAL CIVIL APPLICATION No. 9214 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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- 1 Whether Reporters of Local Papers may be allowed
to see the judgment ? Yes
- 2 To be referred to the Reporter or not ? No
- 3 Whether their Lordships wish to see the fair copy
of the judgment ? No
- 4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ? No
- 5 Whether it is to be circulated to the civil judge
? No

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RAGHUVIR A MARATHA & 2 - Petitioner(s)
Versus
APPELLATE TRIBUNAL FOR FORFEITED PROPERTIES & 1 -
Respondent(s)

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Appearance :

MR BB NAIK for Petitioner(s) : 1 - 3.

MR. PURVISH MALKAN FOR JITENDRA MALKAN for Respondent(s)

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 23/06/2006

ORAL JUDGMENT

By way of these petitions, the petitioners
of respective writ petitions have prayed that the

order of forfeiture dated 31.5.2000 passed by the competent authority as well as the order dated 1.2.2006 passed by the appellate authority may be set aside in so far as the petitioners are concerned and it may be held that on the basis of the said orders the petitioners cannot be evicted from the disputed premises. According to the petitioners, they are sitting tenants of the premises which is situated at "Chandan Villa Sherri No. 1", Divanpra, Rajkot, which belonged to Durlabhji Narsibhai Jogia and Smt. Banumatiben Durlabhji Jogia. It seems that against the aforesaid landlords, proceedings have been taken by the competent authority under the provisions of Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976. One Durlabhji Narsibhai Jogia who is the owner of the aforesaid property was detained under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "the COFEPOSA) by the order of the State Government dated 21.1.1992. The said order was confirmed by the Advisory Board. Thereafter, the authority started proceedings under Section 6 of SAFEMA. The authority thereafter passed order under Section 7 of the said Act. By the aforesaid order the property in question i.e. "Chandan Villa", Divanpara, Rajkot, along with some other property was ordered to be confiscated by passing forfeiture order under Section 7 and appeal preferred against the said order by the said owner of the premises Durlabhji Narsibhai Jogia and Smt. Banumatiben Durlabhji Jogia was dismissed by the

appellate authority. The present petitioners are claiming their tenancy rights in connection with the said property on the ground that they are sitting tenants and they were tenants of the said premises much prior to even notice issued under SAFEMA and therefore their tenancy rights are protected and on the basis of the said order the authority under the Act cannot evict them. In order to substantiate their say, the petitioners relied on the rent note produced on record and assessment order of the Rajkot Municipal Corporation was also produced on record showing name of the tenants occupying the premises in question. In the assessment order quantum of rent is also mentioned. At page 25 at Annexure-D names of the tenants are also mentioned.

Mr. B.B. Naik, learned advocate, submits that since the petitioners are protected by the Rent Act and simply because the order of forfeiture is passed by the authority against the landlord, their tenancy rights cannot be affected and they cannot be evicted on the basis of such order passed against the original owner i.e., the so-called smuggler. Mr. Purvish Malkan, learned advocate appearing for the Department submits that since there was no material with the authority for coming to the conclusion whether the present petitioners are sitting tenants or not, the order in question is silent about this aspect. He further submits that if as per the evidence on record or on any cogent material, it is found that the petitioners are sitting tenants, their

tenancy rights will not be disturbed and the order of forfeiture will be subject to the right of the petitioners. He submitted that at present no notice is issued to the petitioners for eviction and in view of the aforesaid fact which is brought to the notice of the authority and in view of the submission made in this petition, in case the authority wants to take any action against the petitioners for eviction, the authority will hear the petitioners and will take into account the material on record before coming to any conclusion whether there is any genuine lease deed or whether the question of tenancy is pressed into service only in order to defeat the order of forfeiture passed under Section 7 of the Act. He submitted that without holding necessary enquiry, no steps will be taken against the petitioners. He also submitted that the Department will also call for necessary information and the petitioners will be heard and will be permitted to produce evidence in this behalf. Mr. Malkan, learned advocate, further submitted that if ultimately the authority is satisfied that the petitioners are sitting tenants of the premises and so-called lease agreement is not concocted to defeat the order in question, their tenancy rights will be protected and they will be continued as tenants of the Central Government in that case.

In my view, it appears that there is nothing on record to suggest that there is any threat to the present petitioners regarding their tenancy rights.

If the petitioners are occupants of the premises in question and if the authority on the basis of the order passed against the original owners, wants to take any further steps for taking possession from them, the authority shall hear the present petitioners and shall decide whether the petitioners are tenants and whether the tenancy rights of the petitioners are required to be protected in the sense that they were tenants prior to issuance of notice under SAFEMA. Appropriate order will be passed by the authority after hearing the petitioners and after considering the material on record. If ultimately it is found that the lease agreement is genuine and is not executed with a view to defeat the order under SAFEMA, the petitioners' rights are to be protected and in that eventuality the concerned tenants will have to pay rent to the authority under the Act. The authority before passing any order shall give hearing to the petitioners and thereafter shall take appropriate decision as deemed fit in accordance with law. If any adverse order is passed against any of the petitioners, the same shall not be enforced or implemented for a period of two months from the date of communication of such order to the petitioners. The petitions are allowed accordingly subject to what is stated above. To the aforesaid extent, rule is partly made absolute.

It is clarified that this Court has not expressed any opinion about the tenancy rights of the petitioners in any manner. The concerned authority to consider this aspect in accordance with law.

(P.B. MAJMUDAR, J)

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